UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK S. JONES,

Plaintiff,

-against-

LETTIERI CONSTRUCTION, INC., THOMAS LETTIERI, and DEBRA LETTIERI

Defendants.

-- X

Case No.

VERIFIED COMPLAINT

PLAINTIFF DEMANDS A TRIAL BY JURY

Plaintiff Mark S. Jones by and through his attorneys, Piana & Gioe, LLC, complaining of the Defendants Lettieri Construction, Inc. and Thomas Letteri, respectfully set forth and allege:

NATURE OF THE CASE

1. Plaintiff brings this Action against Defendants pursuant to the Fair Labor Standards Act, 29 U.S.C. § 207 (hereinafter "FLSA") and the New York State Labor Law ("NYLL"), Article 6 for Defendants' failure to pay overtime, and to pay for time worked but not compensated.

2. Plaintiff complains that Defendants illegally withheld wages from him in violation of NYLL § 193.

3. Plaintiff alleges a violation of the New York State Wage Theft Prevention Act, in that he was never provided with a compliant statement at the outset of his employment, in violation of NYLL § 195(1)(a).

4. Finally, Plaintiff complains under NYLL § 195(3) for failure to provide compliant wage statements weekly.

JURISDICTION AND VENUE

5. Jurisdiction of this Court regarding Plaintiff's FLSA claim is proper under 29 U.S.C § 216(b) and 28 U.S.C. § 1331.

6. This Court has supplemental jurisdiction over Plaintiff's NYLL claims under 28 U.S.C. § 1367.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that this is a judicial district in which a substantial part of the events giving rise to the instant claims occurred.

PARTIES

8. At all times relevant, Plaintiff Mark S. Jones ("Jones" or "Plaintiff") is an individual and natural person, residing at 3 Farm Lane, Westhampton, New York 11977.

9. At all times relevant, Defendant Lettieri Construction, Inc. ("Lettieri Construction" or "the Company") was a Domestic Business Corporation duly existing pursuant to, and by virtue of, the laws of the State of New York, incorporated on January 5, 1998 and maintaining its principal place of business at 170 Mill Road, Westhampton Beach, New York 11978. Lettieri Construction is an enterprise engaged in commerce within the meaning of 29 U.S.C. § 203(s)(1) in that the materials used in the course of its business have been moved from out of state and that, upon information and belief, its annual gross revenue exceeds $500,000.00.

10. At all times relevant, Defendant Thomas Lettieri ("Thomas") was the Chief Executive Officer of Lettieri Construction, residing at 20 Halsey Ave., Westhampton Beach, New York 11978.

11. At all times relevant, Defendant Debra Lettieri ("Debra") was the Chief Financial Officer of Lettieri Construction, residing at 20 Halsey Ave., Westhampton Beach, New York 11978.

12. The above-named Defendants are all "employers" under 29 U.S.C. § 203(d).

FACTS

I. INITIAL HIRE

13. In July of 2014, Jones was hired by Lettieri Construction as a Project Manager. This was a wage-based, non-executive position. His compensation was to begin at $58.00 per hour with an expected workweek of 45 hours, for a total of $2,610.00 per week or $107,720.00 per year.

14. The initial hire was conducted by Thomas Lettieri himself. At the time of hiring, Jones was given a handwritten layout of what his pay, hours, and expected employee contributions were to be (the "Work Agreement"). A copy of this document is annexed as **Exhibit "A"**. It did not include the name or d/b/a of the Company, the address of its office or principal place of business, or its telephone number. It did not give the company pay day.

15. The Work Agreement did include certain allowances, including $4,000.00 for "car," $3,000.00 for "gas, parking & travel," $15,000.00 for "Health Ins." and $6,000.00 for "S.S." (presumably Social Security). Under the same section were spaces for "Simple Employee Contrabution" [sic] and "Simple Employer contrabution" [sic]. Those spaces were marked with a question mark (?) in the space where a dollar amount would go. The Work Agreement also included the word "Phone" with a blank space for the dollar amount.

16. In addition, Jones received, alongside his paycheck, stubs that lacked critical information. The pay stubs contained:

a. The Company's name
b. "Mark S. Jones"
c. The check number
d. A date (presumably either the date the payment was made or the date the fiscal week ended)

e. An abbreviation of the Company's bank and Company name ("BNB-Lettieri Construct");

f. Four deductions called "payroll expenses"

i. Payroll Expenses: Payroll – Wages
ii. Payroll Expenses: Social Security
iii. Payroll Expenses: Federal
iv. Payroll Expenses: NYS W/H & Unemploy

g. The total paid to Jones

17. Absent from these statements were several of the components required by NYLL § 195(3). They are:

a. The Company's address and phone number
b. Jones' rate of pay and explanation of how the final number was reached
c. The dates of work covered by each paycheck.

18. After working at the Company for some months, Jones began to realize that Defendants were regularly attempting to circumvent the Work Agreement in any manner they could to save themselves money, e.g. by falsifying company records, unilaterally changing policies, and illegally withholding monies that they were not entitled to. When Jones attempted to bring these violations to light with management, Thomas and Debra reacted by becoming belligerent and unprofessional rather than addressing his concerns.

19. After enduring a seemingly-endless stream of indignities, broken promises, and thefts of monies owed to him, Jones left the Company on or about May 24, 2016.

II. OVERTIME HOURS

20. Throughout the 96 weeks that Jones worked for Lettieri, his schedule was 45 hours per week. He was paid $58.00 per hour, straight, throughout all of his working time. The $58.00 per hour straight time was paid even though he was due 5 hours of overtime (at $87.00 per hour) each week. This resulted in a shortage of $145.00 per week for all 96 weeks Jones worked for Lettieri, totaling $13,920.00 of overtime that he should have been paid but was not.

21. Additionally, on or about August 29, 2016, Lettieri Construction was hired to perform renovations on the New York City apartment owned by client Guy Wyser-Pratte. Jones' involvement in the project lasted from September 6, 2015 through December 4, 2015. During this time, Jones worked an additional 64 hours of overtime *over and above* his regular 45 hours per week. This amounted to an additional $1,856.00.

22. All in all, Jones was not paid $15,776.00 of overtime.

III. UNLAWFUL DEDUCTIONS

23. At the outset of Jones' first year at Lettieri, he was advised that certain deductions would be taken from his total pay. Although he was supposed to make $107,720.00 per year, substantial deductions were taken out of his paycheck. Those included $3,000.00 per year for "Gas, parking, and travel expenses," $4,000.00 for use of a company car, and $6,000.00 for social security, only half of which was legally permissible to withdraw. As such, $10,000.00 was cleary and illegally withdrawn from Jones' pay in his first year.

24. Furthermore, Jones' base pay on each of his paychecks the first year is displayed as $1961.54. One full year at that rate comes to $102,156.08, which is $5,563.92 less than his promised base pay of $107,720.00. This discrepancy was never explained, meaning that Jones' illegal payroll deductions totaled $15,563.92 his first year.

25. Additionally, on or about September 1, 2015, Jones was engaged in a voluntary restoration of the VFW hall in Westhampton Beach. This project was, at first, unrelated to the Company and done on Jones' own time.

26. Approximately two weeks into the project, Thomas found out that Jones was doing the work, and suggested that Plaintiff offer the VFW two weeks of free labor from the Company

to complete the project. Jones presented this offer, which the VFW accepted, and the construction work was performed. The value of the work came to $5,940.00.

27. After completion, Debra informed Jones that she and Thomas had changed their minds, no longer considered the work to be donated, and that Jones now owed the Company the $5,940.00 for costing the company that sum in labor and materials.

28. On December 7, 2015, Debra presented Jones with an acknowledgement that he owed this money and threatened to terminate his employment if he did not sign it. Under economic duress, he did so. Beginning on January 5, 2016, money was deducted from Jones' weekly pay at a rate of $114.23 per check until he left the company on May 26, 2016. Over the course of those twenty weeks, Defendants deducted $1,827.68

29. Beginning in his second year, Lettieri purportedly raised Jones' salary by $5,000.00 per year to $107,000.00, however, this salary was also subject to illegal deductions. These deductions included the aforementioned VFW repayment and $4800.00 for the use of a company car that he did not, in fact, use (prorated to $1,476.92 for the 16 weeks worked that second year). A sheet detailing Jones' pay for the second year of work is attached as **Exhibit "B"**.

30. In all, Jones was subjected to $15,563.92 in illegal deductions his first year and $3,304.60 his second year, for a total of $18,868.52.

IV. UNPAID WAGES

31. Jones left the Company on or about May 24, 2016. At that time, he was due the last paycheck owed to him, an amount of $1,286.18. This represents his regular salary, minus legal deductions but without subtracting the illegal $58.17 for the VFW project.

32. He was also, at that time, due a prior paycheck, also in the amount of $1,286.18 some weeks earlier. This paycheck had been duly deposited in Jones' account, but inexplicably withdrawn. No explanation was ever offered for this withdrawal.

33. Finally, Jones was never given his pay for his last week of work, which consisted of two days. The total pay for that week should have been $514.47.

34. In total, Defendants failed to pay Jones $3,086.83 in wages due. This amount remains outstanding.

AS AND FOR A FIRST CLAIM
Violation of the Fair Labor Standards Act
(Failure to Pay Overtime at the Federally-Mandated Rate)

35. Plaintiff repeats and realleges every statement found in paragraphs 1 through 34 with the same force and effect as if fully set forth herein.

36. Plaintiff performed 544 hours of overtime work (hours worked above and beyond forty in a workweek) at a rate of $58.00 per hour. These hours should have been paid at $87.00 per hour, under 29 U.S.C. § 207(a)(2). Therefore, Plaintiff was illegally not compensated in the amount of $29.00 per hour for 544 overtime hours worked, for a total uncompensated pay of $15,776.00.

37. As a company that has been in business for nearly twenty years, and one that employs numerous hourly staff members, Defendants should have been aware of the laws regarding employee notifications. As such, Defendants' actions were willful, malicious, and done with full knowledge of the law. Consequently, Plaintiff is entitled to liquidated damages equal to $15,776.00 due under 29 U.S.C. § 216(b), making Defendants liable to Jones for a total amount of $31,552.00, plus attorneys' fees, interest, and the costs of bringing this Action.

AS AND FOR A SECOND CLAIM
Violation of 12 NYCRR 142-2.2
(Failure to Pay Overtime at the State-Mandated Rate)

38. Plaintiff repeats and realleges every statement found in paragraphs 1 through 37 with the same force and effect as if set forth fully herein.

39. As set forth fully above, Plaintiff worked 544 overtime hours at a rate of $58.00, but which should have been compensated at $87.00 per hour, as mandated by 12 NYCRR 142-2.2. Thus, he was owed $29.00, times 544 hours, for a total of $15,776.00.

40. Additionally, Defendants have no good faith basis for believing that their payment schedule was in compliance with the law. Thus, Plaintiff is entitled to liquidated damages equal to 100% of the unpaid amount under NY Labor Law § 198(1-a), a total of $15,776.00. As such, Defendants are liable for $31,552.00, plus attorneys' fees, interest, and the costs of bringing this Action.

AS AND FOR A THIRD CLAIM
Violation of New York State Labor Law § 193
(Illegal Deductions)

41. Plaintiff repeats and realleges every statement found in paragraphs 1 through 40 with the same force and effect as if fully set forth herein.

42. Defendants illegally deducted $18,868.52 from Jones' paychecks during his tenure as an employee. These deductions were made by surreptitiously leaving amounts unpaid between what Jones was promised as a salary and what he actually received, with neither explanation nor acknowledgment that this was going on.

43. Plaintiff was instructed to offer two weeks of unpaid construction service to the VFW of Westhampton Beach. He did so, the service was accepted, and the work was performed, for a value of $5,940.00.

44. Defendants then revoked this offer and held Plaintiff financially accountable for the $5,940.00. Under duress, Plaintiff agreed to return the money through garnishments of his paycheck. These garnishments were, in fact, taken at a rate of $58.17. Said deduction was taken twenty times, for a total of $1,163.40.

45. Because the garnishments were not voluntary, and because the terms of the garnishments were not detailed in writing to Plaintiff, they violate New York Labor Law § 193. Further, because the deduction is a recoupment for losses, it violates 12 NYCRR § 195-4.5.

46. In addition, on or about May 24, 2016, the time Plaintiff concluded his employment, Defendants failed to remit to him three paychecks. To date, these paychecks are still outstanding.

47. The paychecks in question totaled $3,086.83, if paid at Plaintiff's regular legal rate and making no allowance for the illegal, aforementioned deduction of $58.17. This constitutes a deduction of three entire paychecks, without explanation.

48. As such, Plaintiff is entitled to recover $18,868.52, representing the total monies illegally deducted, plus his unpaid wages amounting to a total of $3,086.83, for a total of $21,955.35. In addition, Plaintiff is entitled to liquidated damages of an additional $21,955.35 under NYLL § 198(1-a). Defendants are therefore liable to Plaintiff for $43,910.70, plus attorney's fees and the costs of bringing this Action.

AS AND FOR A FOURTH CLAIM
Violation of New York State Labor Law 195(1)(a)
(Insufficient Notification)

49. Plaintiff repeats and realleges every statement found in paragraphs 1 through 48 with the same force and effect as if fully set forth herein.

50. Defendants offered Plaintiff a "Work Agreement" at the outset of his employment. This Work Agreement did comport with NYLL § 195(1)(a) because it omitted the name and/or

d/b/a of the Company, the address of its office or principal place of business, and its telephone number. There was no listing of the company pay day.

51. Further, the "allowances" section omitted certain dollar amounts, to wit, the phone and Employee and Employer contributions. A compliant pay notice was never supplied.

52. Because this documentation is necessary under NYLL § 195(1)(a), Plaintiff is entitled to recover damages of fifty dollars per workday that the Company remained out of compliance, up to a total of five thousand dollars under NYLL § 198(1-b). Because Plaintiff worked for the Company for longer than one hundred days and never received a compliant notice, he is entitled to the maximum allowable penalty of $5,000.00, plus attorney's fees and the costs in bringing this Action.

AS AND FOR A FIFTH CLAIM
Violation of New York State Labor Law § 195(3)
(Insufficient Pay Stubs)

53. Plaintiff repeats and realleges every statement found in paragraphs 1 through 52 with the same force and effect as if fully set forth herein.

54. Each week, with his pay stubs, Plaintiff received a pay stub which omitted several required elements. Those elements are: the Company's address and phone number, Plaintiff's rate of pay, the explanation of how his net pay amount was reached, and the dates of work covered by each paycheck.

55. Because this documentation is necessary under NYLL § 195(3), Plaintiff is entitled to recover damages of fifty dollars per workday that the Company remained out of compliance, up to a total of five thousand dollars under NYLL § 198(1-d). Because Plaintiff worked for the Company for longer than one hundred days and never received a compliant notice, he is entitled

to the maximum allowable penalty of $5,000.00, plus attorney's fees and the costs in bringing this Action.

WHEREFORE, Plaintiff demands as follows:

a) On the First Claim, $31,552.00, plus attorneys' fees, interest, and the costs of bringing this Action;

b) On the Second Claim, $31,552.00, plus attorneys' fees, interest, and the costs of bringing this Action;

c) On the Third Claim, $43,910.70, plus attorneys' fees, interest, and the costs of bringing this Action;

d) On the Fourth Claim, the maximum allowable penalty of $5,000.00, plus attorney's fees and the costs in bringing this Action;

e) On the Fifth Claim the maximum allowable penalty of $5,000.00, plus attorney's fees and the costs in bringing this Action; and

f) Such other and further relief as this Court may deem just and proper.

Dated: April 21, 2017
Hauppauge, New York

PIANA & GIOE, LLC

By: ______________________

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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

Mark S. Jones, the undersigned, being duly sworn, deposes and affirms under penalty of perjury:

I am the Plaintiff in this Action. I have read the foregoing Complaint and know the contents thereof to be true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters, I believe them to be true.

The sources of my information and the grounds of my belief as to all matters in the foregoing complaint not therein stated on my knowledge are: my own financial books and records.

Dated: 4.18.17
Westhampton, NY

Mark S. Jones

Sworn to before me, this
18th day of April, 2016 2017.

Notary Public

NORMA PENA
NOTARY PUBLIC-STATE OF NEW YORK
No. 01PE6261636
Qualified In Suffolk County
My Commission Expires 05-14-2020